

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: Walla Walla (CENWW)
FILE NUMBER: NWW-2007-592-C07

PROJECT LOCATION INFORMATION:

State: Idaho
County: Bonner
Center coordinates of site (UTM): N. 5317920.06 E. 542169.70 Lat. 48.01515159 Lon. -116.43453974
Approximate size of area (parcel) reviewed, including uplands: 0.01 acres.
Name of nearest waterway: Tumbledown Creek
Name of watershed: Pend Oreille

JURISDICTIONAL DETERMINATION

Completed: Desktop determination ☒ Date: May 23, 2007
Site visit(s) ☐ Date(s):

Jurisdictional Determination (JD):

☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area.

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.01 Acre

☐ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☐ (2) The presence of interstate waters including interstate wetlands.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☐ (4) Impoundments of waters otherwise defined as waters of the US.

☐ (5) The presence of a tributary to a water identified in (1) - (4) above.

☐ (6) The presence of territorial seas.

☐ (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above. Tumbledown Creek flows directly to Pend Oreille Lake. Pend Oreille Lake is designated as navigable waters of the United States for purposes of Section 10 of the Rivers and Harbors Act of 1899. This is documented in a Report of Navigability of Clark Fork River above Lake Pend Oreille, Idaho and Montana, dated April 1932, signed by the Chief of Engineers. The lake was historically used to transport loose logs to local mills that shipped lumber to local, national, and international markets. The U.S. Coast Guard has designated the lake as navigable. Further, in a 1986 U.S. Court of Appeals case in the Ninth Circuit, *Swanson v. United States* 789 F.2d 1368 (9th Cir.), the court confirmed that Pend Oreille Lake is a navigable water of the U.S. Residents, out-of-state, and worldwide visitors currently use the lake heavily for boating, fishing, hunting, swimming, and general recreation. Therefore, the degradation or destruction of Tumbledown Creek could affect interstate commerce.

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

☒ Ordinary High Water Mark indicated by:

☐ clear, natural line impressed on the bank

☐ the presence of litter and debris

☐ changes in the character of soil

☒ destruction of terrestrial vegetation

☐ shelving

☐ other:

☐ Mean High Water Mark indicated by:

☐ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ tidal gages

☐ other: formfld

☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☐ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant.
 - ☐ This office concurs with the delineation report, dated, prepared by (company):
 - ☐ This office does not concur with the delineation report, dated prepared by (company): formfld
- ☐ Data sheets prepared by the Corps.
- ☐ Corps' navigable waters' studies:
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Minerva Peak
- ☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☐ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☐ USDA Natural Resources Conservation Service Soil Survey:
- ☐ National wetlands inventory maps:
- ☐ State/Local wetland inventory maps:
- ☐ FEMA/FIRM maps (Map Name & Date):
- ☐ 100-year Floodplain Elevation is: (NGVD)
- ☐ Aerial Photographs (Name & Date):
- ☐ Other photographs (Date):
- ☐ Advanced Identification Wetland maps:
- ☐ Site visit/determination conducted on:
- ☐ Applicable/supporting case law:
- ☐ Other information (please specify):

Preparer: Dean Hilliard **Date:** May 23, 2007

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.